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SUPREME COURT, U. S.

FILED

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 884

HELBROS WATCH CO., ET AL., PETITIONERS

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE FEDERAL TRADE COMMISSION IN OPPOSITION

The only question raised by the petition is whether there is substantial evidence to support the Commission's finding that the pre-ticketed retail prices on petitioners' watches were fictitious (Pet., p. 7), *i.e.*, that "the retail price tag placed on the watches is in excess of the usual and regular price at which the watches sell at retail" (Pet. App. 3a). The court of appeals, after reviewing the evidence, correctly concluded that the finding "is supported by substantial evidence upon the record viewed as a whole" (*ibid.*). There is no occasion for further review of this factual question.

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The identical question—the substantiality of the evidence to support a Commission finding that preticketed prices on watches were fictitious—was presented to this Court last Term, and the Court declined to review the issue. *Art National Mfrs. Distrib. Co.* v. *Federal Trade Commission*, certiorari denied, 370 U.S. 939, rehearing denied, 371 U.S. 854. Since, except for a few minor deletions, the argument in the present petition is identical with that made in *Art National*,[1] we respectfully refer the Court to our Brief in Opposition (No. 974, O.T., 1961) in that case. The considerations which led to the denial of certiorari there are equally applicable in this case, and similarly call for denial of the present petition.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

JAMES MCI. HENDERSON,
General Counsel,
Federal Trade Commission.

MARCH 1963.

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[1] The present petition here was filed by the same counsel who filed the petition in *Art National*, and the legal argument on this issue here is substantially verbatim as that made in *Art National*.